In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 3302 of 2005

Date of Decision: 19.10.2006

Havildar Amarjit Singh

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Angad Singh, Advocate
for the petitioner.

Mr. B.S. Chahal, A.A.G., Punjab
for the respondents.

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J.S. Khehar, J. (Oral).

The petitioner was enrolled in the Indian Army on 18.12.1962, during the subsistence of the first national emergency. In this behalf, it would be pertinent to mention, that the first national emergency was declared by the President of India, on 26.10.1962, and further, that the said emergency came to be lifted on 9.1.1968. The petitioner was discharged from service on completion of the term of his employment, on 31.7.1978. Immediately, on his release from the Armed Forces, he enrolled himself with the employment exchange, whereafter, he came to be selected and appointed as a Patwari in the Revenue Department of the State government, on 14.1.1982.

Having rendered service in the Indian Army from 1962 to 1978,

the petitioner continued to press his claim for grant of increments and seniority, under the provisions of the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as the 1965 Rules). Since the claim raised by the petitioner did not bear fruit, he approached this Court by filing Civil Writ Petition No.18185 of 2004. The aforesaid writ petition came to be disposed of by this Court with a direction to the Deputy Commissioner, Ludhiana, to take a final decision on the legal noticed submitted by the petitioner (wherein, he had agitated the aforesaid claim), by passing a well reasoned speaking order. In compliance with the directions issued by this Court, the Deputy Commissioner, Ludhiana, passed an order dated 28.1.2005, rejecting the claim of the petitioner.

It is not a matter of dispute, that the present controversy is to be adjudicated in terms of Rule 4 of the 1965 Rules, which not only deals with increments and seniority, but also, pension on account of military service rendered by an employee, prior to his civil employment. Rule 4 of the 1965 Rules, is accordingly, being extracted hereunder:-

> "4. Increments, seniority and pension:- Period of military service shall count for increments, seniority and pension as under:-
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> (i) Increments:- The period spent by a person on military service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II. This concession shall, however, be admissible only on first

appointment.

(ii) Seniority:- The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

(iii) Pension:- The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government subject to the following conditions:-

(1) the person concerned should not have earned a pension under military rules in respect of the military service in question;

(2) any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government;

(3) the period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government."

In order to repudiate the claim of the petitioner, learned counsel for the respondents, has placed reliance on the decision rendered by the Apex Court in **State of Haryana Vs. Shri Om Parkash,** 2006(3) RSJ, 771, wherein Rule 4(iii) of the 1965 Rules, extracted hereinabove, came up

for interpretation at the hands of the Supreme Court. The observations of the Supreme Court in Shri Om Parkash's case (supra), which have been brought to our notice, are being extracted hereunder:-

> "A bare reading of the provisions makes the position clear that for the purpose of commuting the period of permanent service, two conditions are to be kept in view. First is that the person concerned should not have earned a pension under Military Rules in respect of the military service in question. The second condition in fact has two parts. For the purpose of working out the entitlement, the period if any between the date of discharge from military service and the date of appointment to any service or post under the Government shall count of pension automatically if such period does not exceed one year. But if the period exceeds one year but does not exceed three years, the period may be allowed to be counted in exceptional cases. In other words, the Government must pass an order holding that the case was an exceptional one and, therefore, instead of period of one year, period upto three years could be reckoned for the purpose of computation. If the period is more than three years, there is not scope for including the same for the purpose of working out the pensionary entitlements.

Learned counsel for the petitioner, on the other hand states, that the judgement rendered by the Supreme Court in Shri Om Parkash's case (supra), is irrelevant to the proposition canvassed at the hands of the petitioner on account of the fact, that Rule 4(iii), which came up for consideration before the Apex Court, pertains to a claim of pension,

whereas, in the present controversy, the petitioner is only claiming increments and seniority, which have been dealt with under Rule 4(i) and (ii) of the 1965 Rules. It is, therefore, the vehement contention of the learned counsel for the petitioner, that the conditions stipulated under Rule 4(iii) of the 1965 Rules, are inapplicable to the determination of a claim for grant of increments and seniority.

Having considered the matter in its totality and perused Rule 4 of the 1965 Rules, we are satisfied, that the conditions incorporated under Rule 4(iii) of the 1965 Rules, clearly and specifically apply to the determination of pensionary rights of an employee, and are not relatable to a claim raised for increments or seniority. In view of the above, we are satisfied, that the decision rendered by the Supreme Court in Shri Om Parkash's case (supra) is clearly inapplicable to the controversy in hand.

Learned counsel for the respondents also asserted, that the petitioner never rendered military service in terms of the 1965 Rules, and as such, is not entitled to raise a claim for any benefit under the said Rules. Rule 2 of the 1965 Rules, which is relevant for the purpose, is being extracted hereunder:-

> "2. Definition:- For the purposes of these rules, the expression "military service" means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules.

Any period of military training, followed by military service shall also be reckoned as military service."

In order to repudiate the contention of the learned counsel for the respondents, that the petitioner had not rendered military service, learned counsel for the petitioner has invited our attention to the discharge certificate issued to the petitioner (copy whereof has been appended to the written statement as Annexure R-2), delineating the rank of the petitioner, the date of his enrollment, the date of his discharge, as well as, the fact, that he was discharged under the Army Rules, 1954, at his own request after rendering 15 years of service. Additionally, the discharge certificate reveals the grant of Samaj Sewa Star 1965, Pachhami Star 1965 and Haga hills 1945, as well as, other medals/decorations/mentions award, to the petitioner during the course of his employment. The discharge certificate also notices, that the petitioner was awarded Raksha Medal 1965. All these medals/awards/decorations, according to the learned counsel for the petitioner, are awarded only to personnel enrolled in the Armed Forces. At the end of the discharge certificate, the signatures of the petitioner have been obtained under the depiction, "Signature of Soldier". In addition to the discharge certificate issued to the petitioner, learned counsel for the petitioner has invited our attention to a communication dated 14.1.2004 (Annexure P-6) addressed by the Deputy Commissioner, Ludhiana, to the Evaluation and Advisor Officer, Revenue Department, Government of Punjab, wherein the Deputy Commissioner, Ludhiana, himself notices, that the petitioner retired from the Army on 31.7.1978. It is also noticed in the communication dated 14.1.2004, that the petitioner was employed in civil employment against a vacancy reserved for an Ex-serviceman. Furthermore,

in the certificate issued by the Department of Sainik Welfare, Punjab, dated 27.5.2004 (which has been placed on the record of this case as Annexure P-7), it is certified by the Director Sainik Welfare, Punjab, that the petitioner had served the Indian Army during the national emergency w.e.f. 18.12.1962 to 8.1.1968, and that, he rendered service in the Army upto 31.7.1978, whereafter, he was re-employed as a Patwari in civil employment on 14.1.1982. On a collective perusal of Annexures R-2, P-6 and P-7 (relevant details whereof have been narrated hereinabove), we are of the view, that it does not lie with the respondents to raise the instant objection. As a matter of fact, the employment of the petitioner with the Bengal Engineer Group, has been accepted by the respondents as service with the Indian Army.

Since the petitioner factually rendered military service during the proclamation of emergency at the hands of the President of India, we are satisfied, that the claim of the petitioner for increments, as well as, seniority for the period of military service rendered by him during the subsistence of emergency, has to be accepted. Ordered accordingly.

The respondents are directed to calculate increments and seniority of the petitioner, on the basis of military service rendered by him during the subsistence of emergency, within a period of two months from the date of receipt of a certified copy of this order, and release the same to the petitioner within a further period of one month.

It seems to us, that the stance adopted by the respondents on the basis of the decision rendered by the Apex Court in Shri Om Parkash' s case (supra), as also, on the issue, that the petitioner had not rendered military service within the meaning of the 1965 Rules, was deliberate, and in order

to unreasonably deny the claim of the petitioner, which was fully justified under the 1965 Rules. In the facts and circumstances of this case, we find the petitioner entitled to costs. The instant writ petition is, accordingly, allowed with costs, which are quantified at Rs.10,000/-.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

19.10.2006
sk.